

## 1 of 3

1 On May 27, 2016, Defendant filed a motion to dismiss the indictment and suppress the  
2 prior removal order. (*See* ECF Nos. 43, 45). On June 8, 2016, the Government filed a timely  
3 response opposing the motions, arguing they should be denied as successive § 2255 motions.  
4 (*See* ECF No. 44). Defendant's deadline for filing a reply was June 14, 2016, but Defendant did  
5 not file a reply until June 27, 2016, (*see* ECF No. 46), two days before the Court denied the  
6 motions as successive § 2255 motions (*see* ECF No. 47). As a result of Defendant's delay, the  
7 Court was not aware of Defendant's reply before issuing its order. Defendant now moves the  
8 Court to reconsider its order by considering the arguments in his reply (ECF No. 51).

9 In Defendant's reply, he argued that his motion to dismiss the indictment was not a  
10 successive § 2255 motion; rather, it was a motion based on the retroactive rule in *Johnson v.*  
11 *United States*, 135 S. Ct. 2551 (2015). Because Defendant raised this argument in his reply, the  
12 Government has not had an opportunity to respond to it. However, Defendant has already  
13 appealed the Court's order denying his motions and, in any case, the *Johnson* argument is  
14 procedurally defaulted. As the Court noted in a prior order, (*see* ECF No. 42, at 4), in the plea  
15 agreement Defendant waived all collateral challenges to his conviction and sentence (except  
16 those for ineffective assistance). (*See* Plea Mem. ¶ 13, ECF No. 26). The Court denies the motion  
17 to reconsider.

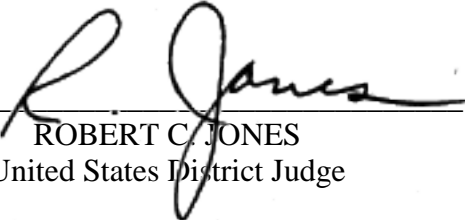
18 The Court notes that "[o]nce a notice of appeal is filed, the district court is divested of  
19 jurisdiction over the matters being appealed." *Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*,  
20 242 F.3d 1163, 1166 (9th Cir. 2001). However, in this circumstance, "the court may: (1) defer  
21 considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if  
22 the court of appeals remands for that purpose or that the motion raises a substantial issue." Fed.  
23 R. Civ. P. 62.1(a). In this case, the Court elects to deny the motion.

1  
2 **CONCLUSION**

3 IT IS HEREBY ORDERED that the Motion to Reconsider (ECF No. 51) is DENIED.

4 IT IS SO ORDERED.

5 DATED: This 29<sup>th</sup> day of August, 2016.

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8 ROBERT C. JONES  
United States District Judge  
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